

**CAPE COD REGIONAL GOVERNMENT
ASSEMBLY OF DELEGATES**

APPROVED Journal of Proceedings – September 18, 2013

Speaker BERGSTROM: Good afternoon. Welcome to the Wednesday, September 18th session of the Cape Cod Regional Government, Assembly of Delegates.

I'll call this meeting to order. And we will begin with a moment of silence to honor our troops who have died in service to our country and all those serving our country in the Armed Forces.

And we include the unfortunate victims of the slaughter down in Washington also.
(Moment of silence.)

Thank you. And we'll stand for the Pledge of Allegiance.
(Pledge of Allegiance.)

Speaker BERGSTROM: The Clerk will call the roll.

Roll Call (92.72%): Richard Anderson (9.15% - Bourne), Cheryl Andrews (1.36% - Provincetown), Ronald Bergstrom (2.84% - Chatham), Leo Cakounes (5.67% - Harwich), Ned Hitchcock (1.27% - Wellfleet), James Killion (9.58% - Sandwich), Marcia King (6.49% - Mashpee), Teresa Martin (2.30% - Eastham), Suzanne McAuliffe (11.02% - Yarmouth), Deborah McCutcheon (0.93% - Truro), John Ohman (6.58% - Dennis), Patrick Princi (20.92% - Barnstable) Julia Taylor (14.61% - Falmouth).

Absent (7.28%): Christopher Kanaga (2.73% -Orleans), Anthony Scalese (4.55% - Brewster).

Clerk O'CONNELL: Mr. Speaker, we have a quorum with 92.72 percent of the Delegates present; 7.28 percent absent.

Committee of the Whole

Speaker BERGSTROM: Okay. I'll now need a motion to approve the Calendar of Business. Are there any changes or corrections to the Calendar?

Deputy Speaker MARTIN: Yes. I'd like to make a Motion to Amend the Calendar of Business to move Number 8, Communications from the Board of Regional Commissioners, down to below Number 10. Put it last.

Ms. KING: Second.

Speaker BERGSTROM: Moved and seconded. Everybody understand that?

Ms. ANDREWS: No, hold on just a second. Oh, so it's still up here.

Chairperson BERGSTROM: Okay. All those in favor, say "Aye." "Opposed?"
(Motion carried.)

Speaker BERGSTROM: We now need a Motion to Approve the Journal of September 4, 2013. You should have received a copy of the journal. Do I have any additions or corrections?
Hearing none.

Ms. MCAULIFFE: Move the approval.

Speaker BERGSTROM: Okay. It's been moved.

Mr. HITCHCOCK: Second.

Chairperson BERGSTROM: Moved and seconded. All those in favor say "Aye."
(Motion carried.)

Communications from Members of the Public

Speaker BERGSTROM: Okay. Next we have Communications from Members of the Public? Do any members of the Public wish to address the Assembly?

Yes, I see a hand in back. Please come forward, identify yourself, and use the microphone.

MR. PETER KENNEY: Good afternoon. Peter Kenney, West Yarmouth.

Chairperson BERGSTROM: I have to say that the self-imposed time constraints that were in effect last week are also still in effect.

Mr. PETER KENNEY: So it's as much as you can grab. I'll be brief.

Mr. CAKOUNES: I don't think that's on, Peter.

Mr. PETER KENNEY: Okay.

Mr. CAKOUNES: There you go.

Mr. PETER KENNEY: During the process of discussion and comment, particularly the two items that are you before you today, but generally also what we're starting to hear in the press from people such as one of the County Commissioners.

There seems to be a desire to implant the assumption in everybody that reorganization of County government is a done deal, and we pretty well what it's going to look like. Barnstable, of course, being the largest town, is going to beat its chest and demand that it be the controlling influence.

I would like to suggest to this body that we're not done with the process of revision of the County Charter. In fact, in terms of public involvement, we've barely started.

The two particular items you have before you today both have been spoken on in terms of measures which will give towns the ability and the authority to make decisions on matters as they see fit.

But this League of Women Voters sponsored love fest about the revision of the County Charter proposes exactly the opposite. And Commissioner Lyons has been quoted in so many words as saying well as we're moving away from local control and more towards regionalization. Who said that? Have we voted on that yet? Has that been approved by anybody? Has it been brought before this Assembly? Has it come out of the Commissioners' meetings? I think this is very dangerous, very dangerous process we're watching.

And I will leave you with one example. Way back in 1994, I believe, when I took my first run in Yarmouth to get us out of the Cape Cod Commission, a person came to the microphone identified as a citizen of the town entitled to speak and vote and identified herself as the official representative for that evening's proceedings of the League of Women Voters and said, "This is far too important to leave to the voters." Really?" Far too important to leave to the voters.

And it is I think in that spirit that the move towards a revision of our County Charter as being supported and crafted. I resent it. I think it's absolutely wrong. And I just want to be on the record before this body as saying if we're serious, as we see in these two measures today, about supporting local control, then let's carry that throughout our process and not cave into this assumed 5 to 7 member Commissioner board with the biggest town on the Cape being the strongest voice in everything. Because I live next door to them, and it provides some interesting moments.

So can we please establish for once and for all the direction we're going. Are we a County government which can offer resources and assistance to the towns but recognizes local authority and encourages local control over certain issues, or are we moving towards a one-size-fits-all?

Thank you.

Speaker BERGSTROM: Okay. Does anyone else wish to address the Assembly? I see a

hand up there. Okay. I'd ask respectfully that if this body has received these comments before, please be brief.

MR. BRIAN HERRINGTON: Yes. Absolutely. My name is Brian Herrington. I'm with the Scotts Miracle-Grow Company. I wanted to make just some brief comments. I know I've submitted comments to the Assembly of Delegates on the proposed DCPC.

Based on information that came across today from the Commission, I know they've put out some proposed draft regulations. I've talked to them. I know they're not finalized, but I just wanted to, again, voice some concern to the Assembly of Delegates with those proposed regulations.

We are supportive of this. We've worked with other states and other places on standards. I know the Commissioners said there still can be dialogue about that. But I just want to put out there, you know, many of the products that are for sale from our company out on retail would -- do meet UMass and other university Best Management Practices now.

Based on the standards that are in the proposed draft regulations, those products would have to come off the market.

So we look forward to talking to the Commission about it, but we just wanted to put on the record that there are products out there that would meet the standards that are proposed right now that would need to come off the market if it goes forward as is.

So we look forward to working with the Commission, and we look forward to working with all of you to educate the public.

Thank you.

Speaker BERGSTROM: Thank you. Anyone else wish to address the Assembly? All right.

Communications from the Board of Regional Commissioners

Chairperson BERGSTROM: In that case, we will go to the Communications from the Board of Regional Commissioners. Mrs. Lyons.

Commissioner LYONS: I have some communication.

Chairperson BERGSTROM: You've got our Ordinances?

Commissioner LYONS: I do. I have your Ordinances, and a Resolution Mr. Speaker.

Chairperson BERGSTROM: Thank you.

Commissioner LYONS: And I'm really just here to wish you all a good afternoon. I don't think there's anything to report.

We have Administrator interviews coming up September 26 and October 1. So we're looking forward to that. Pat is the only person, Pat and Maggie, sort of vetted through some of these after we gave our input.

And I attended a regionalization conference this past Monday that is traditionally held. This is the fifth year it was held up in Holy Cross up in Worcester. And it was very well attended, and it had some very interesting workshops.

So I just wanted to recommend that people might want to attend this in the future when it comes across your desk again. There's a lot of Best Practices when it comes to sharing resources with other municipalities. A lot of these efforts are done like in a cog, you know, just between -- municipal agreements between towns with the progress that they are making, how they get grants and everything from land use to energy, renewable energies is discussed, and, you know, how to build consensus for a project, things like that. There was very, very good workshops.

So, I only saw Harry Terkanian there from Cape Cod from Wellfleet. So I just wanted to

recommend it that it is a very good conference and you should just mark it down for the future.

And that's really --

Chairperson BERGSTROM: You've got a question from Suzanne.

Ms. MCAULIFFE: Are you still negotiating with the Agricultural Research Corporation? I know there were a lot of things in Executive Session. I just don't know -- people were asking --

Commissioner LYONS: We really didn't have as many executive sessions as people thought we had. We really just discussed an approach, and it really has not been on our agenda. So I cannot -- that's sort of a dormant thing right now. I'm not sure where it's at.

But I'm glad you suggested -- you brought it up. Maybe we should ask -- where is that? Where is it and where are we on that?

Thank you.

Chairperson BERGSTROM: Ms. Lyons, have the Commissioners taken a stand? I know that ultimately you'll have to pass this as well as we do, but have you come out publicly either for or against either of the Ordinances we have here, the changes to regulation chapter -- Cape Cod Commission Chapter H or the DCPC? Have you discussed this?

Commissioner LYONS: I can't speak on Chapter H, but I can say that we generally are in favor. You know, we all support the DCPC because it is something that gives tools to the towns if they so choose to use them. So it's all about local control and we are in support of it.

Chairperson BERGSTROM: Okay. Thank you.

Commissioner LYONS: And I'll say that publicly for the record hear as well. So, you can enter that in.

Chairperson BERGSTROM: All right. Well, thank you, very much.

Commissioner LYONS: Thank you.

Assembly Convenes

Report of Committees

Standing Committee on Governmental Regulations Report on Proposed Ordinance 13-08

Chairperson BERGSTROM: Okay. The Assembly will now convene. We'll begin with Standing Committee on Government Regulations Report on Proposed Ordinance 13-08, Amendment to the Cape Cod Commission Regulations Chapter H, Section 1 & 4.

Okay. I Chaired that Committee. Present were myself, Richard Anderson, Christopher Kanaga, and Teresa Martin. Also John Ohman. Were you here for the Chapter H?

Mr. OHMAN: No.

Chairperson BERGSTROM: So he was not here for the Chapter H. Okay. So we conducted a Public Hearing on Proposed Ordinance 13-08. It was unanimously -- this Amendment was unanimously passed by the Cape Cod Commission. And ultimately we had a few questions.

I asked specifically whether thresholds could be lowered under this Amendment so the Commission could say, well, we're going to lower thresholds and the answer was no. All right.

So, after that, Christopher Kanaga motioned, it was seconded to recommend approval of Proposed Ordinance 13-08 to amend Cape Cod Commission regulations of general application.

And the motion carried four to zip. So that is it. So do I need a motion to put this on the floor? Hello?

Proposed Ordinance 13-08: Amendment to the Cape Cod Commission Regulations of General Application, Municipal Application for revisions to Development of Regional Impact Thresholds.

Deputy Speaker MARTIN: I'll put it on the floor.

Speaker BERGSTROM: Yeah, well that means you have to -- you have to move to approve.

Deputy Speaker MARTIN: Sorry. Move to -- as the Committee recommended to approve or recommend the Proposed Ordinance 13-08 as Ron just reported on.

Speaker BERGSTROM: Recommended a positive vote on that. Do I have a second?

Ms. TAYLOR: Second.

Speaker BERGSTROM: All right, moved and seconded. Now it's open for discussion. Everybody understand what this does?

Ms. ANDREWS: No. I have a question.

Chairperson BERGSTROM: Yes.

Ms. ANDREWS: You said the Commissioners voted on this unanimously. Any idea how many --

Chairperson BERGSTROM: No, we voted.

Ms. ANDREWS: No, you said the Cape Cod Commission voted it out unanimously in your report.

Chairperson BERGSTROM: Yes.

Ms. ANDREWS: So my question to you is do you have a number of County Commissioners? Do we know which towns voted for it, verses which ones weren't there?

Speaker BERGSTROM: All of them.

Ms. ANDREWS: Yes. Were they all there? All 15 were there that day?

Chairperson BERGSTROM: That I don't know. I mean there are more than 15. There's like 20.

Ms. ANDREWS: Like 18? So we don't know.

Chairperson BERGSTROM: You know you're asking me -- I have no idea who --

Ms. ANDREWS: Okay.

Chairperson BERGSTROM: -- whether -- you're asking two questions. How many are there and how many were there? I don't know the answer to that question.

Yes, Suzanne.

Ms. MCAULIFFE: Chapter H is very familiar to me because when the Regional Policy Plan was revised, the Town of Yarmouth and a lot of other people were very interested in Chapter H because it did talk about thresholds.

And those of you who are on the Assembly do remember that the Town of Yarmouth was interested in adding categories to the thresholds which we were unsuccessful in getting.

So I speak from someone who has -- as someone who has worked with the development of Chapter H.

Currently, it's my understanding that when some municipality wants to raise or lower thresholds, it requires an application made by the Board of Selectmen, a Planning Board or Town Council, and both boards from that particular town have to approve.

Now if I'm incorrect on my assumption, what this does is this also allows the Cape Cod Commission to make an application. But there's nothing that I can find that has municipal approval or backup or even any voice in this.

Because it could even -- they talk about a region, and my understanding of that would be not even -- it doesn't even have to be a municipality. It could be a regional area, you know, let's say

crossing two towns or four towns or whatever.

So this is what concerns me. Right now we have local control. We have the ability of a town to raise thresholds. This does not address lowering because that's a different section of H.

However, it does not give the towns a voice if the Commission makes application. Now there will be Public Hearing, which is a voice, but it does not require a vote of the town or the Planning Boards in the town that this would affect.

And the irony is that Section 9 that is listed is that anything that it wants -- you want to appeal, let's say you don't want to have a 60,000 square foot limit in your part of town where the Commissioners made application, and you want to appeal the decision because the people who approve it are the subcommittee of the Cape Cod Commission and then the full members of the Commission. It doesn't get approval by anybody else. But if you want to appeal it, you appeal it to the Commission and they will vote on your appeal.

So the thing that makes me a little uncomfortable is you have a planning and regulatory agency sort of perhaps thinking that they're helping the towns but, in fact, in my mind, it's a little bit of a nervousness on my part that there would be the ability to take a region of my town and raise thresholds without the town being able to say yes or no.

Now if I'm incorrect, someone please correct me, but that's my interpretation.

Speaker BERGSTROM: Yes. Do we have somebody else? Leo.

Mr. CAKOUNES: Fortunately, I'm going to apologize to everybody at the table on this one. I've been so busy with the other matter that's been before us after this, I have not been able to really spend a lot of time on this.

My questions are pretty much the same as my colleague has just said. On the surface I was for it. It seemed like a logical move. It's a minor change to the already established Chapter H. But I'll be honest with you; I'm not comfortable enough to vote in support of it.

I am going to ask that regardless of what we do with this particular thing that's in front of us today, I don't think it is fair for a representative -- elected official to sit here and make a judgment on something, although seems minor but, quite frankly, as it's been expressed can be a major change without having heard a full presentation from the Cape Cod Commission on this.

Once again, I apologize I did not make the subcommittee meeting. I do rely on our subcommittees to ask questions, but they have, unfortunately on this particular matter, a better understanding of it than I do.

I'm going to have to vote no on this and hopefully encourage that maybe we reschedule it and have the Commission actually come before us because I can't believe that the rest of you really understand this as fully as or maybe not as fully as I do.

Speaker BERGSTROM: Teresa.

Deputy Speaker MARTIN: Yes, I actually had some of those same concerns. And one of the concerns I had was that if you put the language into place and you look at it, the Commission doesn't have to follow two of the guidelines that the towns do.

So I asked about that in the committee meeting. And as was explained there, I will not do it justice. I hate paraphrasing somebody else, but, basically, some of that's covered in another circular point map but I think it be better if you heard directly rather than through me.

And I had the same concern because it looked like the Commission got added and the Commission didn't have to follow the town -- develop the town guidelines and it didn't have to follow the capital and infrastructure requirement. If you look at that, there's two items that towns have to follow that the Commission doesn't have to follow if they trigger it.

But I don't want to answer it. I know where you're coming from because I had the same concern but I don't want to answer and explain it because I'm not going to do it justice. But I think

we should hear that answer directly.

Ms. MCAULIFFE: Mr. Speaker.

Chairperson BERGSTROM: Yes.

Ms. MCAULIFFE: That's not my point. I understand that they will follow everything.

Deputy Speaker MARTIN: But they won't follow everything.

Ms. MCAULIFFE: No, but I'm just saying my point is that they can make an application -- they are a planning and regulatory agency. By making an application, that puts an end to an entirely different light. They are not just the people who are sort of regulating. They are actually putting -- making an application for something they then regulate because it comes before them.

Speaker BERGSTROM: Anyone else? Yes. Cheryl.

Ms. ANDREWS: I think I know the answer to this but I'd like to ask it just to be sure.

This particular Ordinance has nothing to do with the one after it today; is that correct?

Chairperson BERGSTROM: Correct.

Okay. You know I looked at this, and I know that -- the first question I asked several times as I told you in the introduction was could the Cape Cod Commission lower the thresholds and the answer was no.

Now putting aside the suspicion that there are secret pro development people lurking in the Cape Cod Commission who want to raise the thresholds thereby relieving themselves of the responsibility of having to look at it, I think that's probably a highly unlikely prospect.

There are many agencies within the town government that you can -- not many but several that could make a proposal. I don't suspect the Cape Cod Commission is going to spontaneously be looking around the Cape. They're going to be responding to Planning Boards, Zoning Boards of Appeals and so on, regulatory bodies that have direct interest in development.

I see this as a further tool for the town to change the way business is done. A lot of people accuse the Commission as being this overall regulatory agency. I know that some of the language in there could be interpreted to support that, but you could also equally support the idea that this gives the towns another opportunity to go past the infighting that sometimes occurs and go directly to the Commission and request that these regulations be changed and the thresholds be raised.

I mean I know this is zoning and this is complicated, but the Committee looked at it. We didn't see any smoking gun in there. We didn't see any conspiracies. I don't think that there are any people who are planning on doing anything out of the ordinary.

So I supported it in the Committee and I'm going to support it now.

Yes. Cheryl.

Ms. ANDREWS: Would it be possible for you to explain then what is the justification for this being in front of us now? What is missing, so to speak, out there now in the language in Chapter H? What was the reason for doing this now?

Did they give an example of why this was necessary?

Speaker BERGSTROM: The example given was in the case where there was a disagreement between regulatory boards. And I'm with Teresa on this. I hesitate to go too far because I'm not the expert. But let's say the Planning Board wanted this and the Selectmen didn't and the Selectmen wanted it and the Planning Board didn't. I mean this is simply an opportunity for them to accept a change in the -- excuse me, a change in the minimum square footage.

Yes, so, I mean that's as far as I want to go on that as far as explaining it. I mean you could suspend the rules and ask them, you know.

Ms. KING: No.

Chairperson BERGSTROM: You don't want to do that so.

Ms. MCCUTCHEON: I move to suspend the rules in order to be able to ask some

questions.

Chairperson BERGSTROM: Anybody agree with that? Do we have a second?

Ms. TAYLOR: Second.

Mr. OHMAN: Second that.

Speaker BERGSTROM: Okay. It's been moved and seconded so I've got to take a vote on it. All those in favor of suspending the rules, say "Aye." "Opposed?"

Chairperson BERGSTROM: Okay. The no's have it.

Ms. KING: Leo has a question.

Speaker BERGSTROM: Leo.

Mr. CAKOUNES: Just in if you read the Section 4B, "The Cape Cod Commission may propose/revise DRI thresholds on behalf of a region. Such thresholds shall be revised pursuant to Section 6A 2 through 4."

So that means the Cape Cod Commission now decides to change a threshold in the town of Harwich and some area that they are subject to Section 6, 2 through 4.

If you read Section 6A, it says that the -- to receive approval of a DRI threshold, the Board of Selectmen or Town Council or Planning Board must demonstrate to the Commission and must find that the proposal for why the proposal -- why they're requesting the higher DRI threshold.

That's my question right there. I mean let's suppose the Selectmen and the Planning Board don't want to higher the thresholds. If you read the way it's written right now, the Commission only has to meet Section 6. And 2 through 4 are pretty simple, consistent with the proposed function regulations, the goals of regional plan, but it doesn't say anything in there that it has to be approved by some elected body of the community.

And, once again, I'm not really sitting here asking you to vote this down. What I'm asking you to do is if you feel as uncomfortable as I do about it, give the Commission a chance, put it on the agenda, and let them make us a nice PowerPoint presentation so we can understand it and vote on it properly.

I have too many questions.

Speaker BERGSTROM: All right. If the Assembly is not -- there's no time -- this is not a pressing time matter here as far as I know. I mean we could conceivably bounce it to another meeting.

However, I have a motion on the floor and a second. So unless those motions are withdrawn, this is going to come to a vote.

So I mean if you feel that -- is there anybody else who does not understand what this all about?

Ms. MCAULIFFE: Mr. Speaker.

Chairperson BERGSTROM: Yes, first I'll recognize Deborah.

Ms. MCCUTCHEON: I just think that there's some lack of clarity here about what happens if the Commission does propose revised thresholds and the community doesn't want to be bound by them?

It looks to me like the Commission binds that community. And without a vote, I'm not in favor of that. But I don't know the answer to the question so.

Chairperson BERGSTROM: Who did we get a motion and a second from?

Clerk O'CONNELL: I think Teresa was the motion.

Ms. KING: Yes.

Clerk O'CONNELL: Was John Ohman the second on this?

Chairperson BERGSTROM: Any other comment on this? Do you want to stay with your motion, Teresa or do you --

MS. MARTIN: No

Ms. MCAULIFFE: My question is if we vote it down, what then happens? Is there some sort of reconsideration or?

Chairperson BERGSTROM: If it's voted down, it's voted down.

Ms. MCAULIFFE: Okay. So there's no way once you've voted something down then that you can have a majority vote at another meeting?

Chairperson BERGSTROM: Leo.

Mr. CAKOUNES: Could a vote to table this to the next meeting be appropriate?

Chairperson BERGSTROM: We can't table it while we have a motion on the floor that's been moved and seconded.

Ms. TAYLOR: Well, then I'll withdraw my second on the idea of changing it.

Chairperson BERGSTROM: All right. So the motion to approve has been withdrawn and the second's been withdrawn. So now we're back to square one. So if somebody wants to table it.

Ms. TAYLOR: I would move that we table it until a meeting when we can have an explanation for the whole Assembly from the Commission.

Mr. ANDERSON: Second.

Chairperson BERGSTROM: Have we got a second on that?

Chairperson BERGSTROM: Okay. Second from Dick.

Mr. ANDERSON: Yes.

Chairperson BERGSTROM: Okay. Any other comments on that on the motion to table? Okay. Hearing none. All those in favor of tabling this, say "Aye." "Opposed?"

(Motion to table carried.)

Chairperson BERGSTROM: Okay. Anyway, moving right along.

Standing Committee on Governmental Regulations Report on Proposed Ordinance 13-09

Speaker BERGSTROM: We've got to regroup here. Okay. The Government Regulations Committee held a hearing on Proposed Ordinance 13-09 to establish a fertilizer District of Critical Planning Concern pursuant to the Cape Cod Commission Act of Barnstable County, Massachusetts. Present were myself, Richard Anderson, Christopher Kanaga, Teresa Martin, Julia Taylor and John Ohman.

We opened the Public Hearing. I recognized Paul Niedzwiecki. He made a PowerPoint presentation which is available to everyone on the website.

We then heard from an extensive group of the public both for and against. Also documents were submitted to the Assembly which were included in the public record. I'm not going to go into all the testimony because there's quite a bit.

But at the end, we voted to close the public comment period of the meeting on the 11th and to continue the meeting without public comment today, the 18th.

We met today on the 18th. In the interim, the Cape Cod Commission drew up some proposed regulations that towns could use as guidelines when they submit their own regulations should they choose to do so.

And after receiving those, the committee took a vote and it was 4 to nothing in favor of the Proposed Ordinance 13-09.

So that is the report. And I'm looking for a motion.

Proposed Ordinance 13-09: To establish a Fertilizer District of Critical Planning Concern pursuant to the Cape Cod Commission Act (“the Act”) for Barnstable County, Massachusetts.

Deputy Speaker MARTIN: I move that the recommendation of the Committee be put to a vote.

Speaker BERGSTROM: Okay. So moved. Do I have a second on that?

Ms. TAYLOR: Second.

Chairperson BERGSTROM: Julia has a second. Okay. Moved and seconded to approve 13-09. Do we have any comments?

Mr. CAKOUNES: Do you want me to start?

Ms. ANDREWS: I have a question.

Chairperson BERGSTROM: We'll start with Cheryl.

Ms. ANDREWS: Are we going to have the Cape Cod Commission available to answer questions for this board?

Speaker BERGSTROM: The answer is if you suspend the rules, I've been informed that they are willing to make a presentation. The presentation that they made to us last week has been available on the website. Okay.

Ms. ANDREWS: I'll ask my question again because I saw a presentation but I wasn't able to ask questions.

Chairperson BERGSTROM: Okay.

Ms. ANDREWS: And I've been told by some of the senior members of the Assembly that if we have questions that might have answers, we should do it as a group so when we have a hearing we all have the same information.

So I certainly didn't send any emails to the Cape Cod Commission asking the question. I have them here today. So that's my question; can I ask questions today?

Chairperson BERGSTROM: You can ask -- yes, you can. Leo.

Mr. CAKOUNES: Thank you. In front of you I think you all received about five pages that I printed out today just so you could follow along with my comments. And for those of you in the public, they will be available via electronically or I have some -- one copy here that I'd be happy to give out.

If you would for my beginning discussions go to the third page the way it's stapled at the top of the page. It says "Nitrogen load calculation per thousand square feet."

I want to say on the onset of this I'm opposed to this DCPC, and I'm going to ask the members to vote with me in opposition to it.

With that though, I want to say that the next calculations are quick that I'm going to go through. You will see a notation of "CCC#." I want you to know that there has been some discussion about numbers and the different numbers presented. For the purposes of my discussion, I have used the Cape Cod Commission's numbers.

128,000-plus homes divided by 57 percent which actually use fertilizer comes out to 73,000-plus homes.

4,300,000 pounds of fertilizer which is also a Cape Cod Commission number. That is different from the 6.1 or 6.2 million number you have heard because that is the total fertilizer used.

4.3 million is the pounds of fertilizer used by homeowners. I'll estimate by the way. When you divide the 4.3 million by the 72,000 homes, you come out to 59 pounds of fertilizer used.

I went with a 30 percent average of nitrogen, and I got that number by attending a number of different retail stores and calculating an average. They range from 22 pounds to as high as 31 or

34 pounds.

And for the record, I also had another senior member, acquaintance of mine, go out on his own and we came together saying that 30 percent was a pretty good average number. I don't think that anyone's going to argue that, just for argument sake.

Thirty percent of the 59 pounds comes out to 17.86 pounds of nitrogen applied to Cape Cod homes.

When the Cape Cod Commission did their 128,000 home calculation, they had a lot size of 5,000 square feet or over. So you have to take the 17.86, divide it by 5,000. It comes out to -- I'm sorry, and then divide that by 5 because of the 5,000 square foot home, it comes out to 2.98 pounds of nitrogen applied per year per thousand square feet of Cape Cod homes.

If nothing else, you can forget about everything except for by the Cape Cod Commission's numbers, it comes out to 2.98 pounds of nitrogen per thousand square feet.

Now, if you refer to the UMass Dartmouth or UMass Amherst Best Management Practices, you will look at the table that they have put out, and they say for common, cool-season lawn grasses, the range should be between 2 and 4 pounds per thousand square feet per season. The 2.98 falls right into the Best Management Plan's scale.

Now, if you can take your brains out and put them on the table for a minute and think like a simple-minded farmer as I do. If we are following the Best Management Practices and we are going to suggest that we are going to lower that, I would see that -- I believe that you could assume that some of the lawns are not getting enough fertilizer and we may be opening the doors for what some have described in the Public Hearings runoff, lawns -- derogation of lawns, etcetera.

I did put into this calculation, just for argument sake, that there was some other numbers floating around 420,000 pounds as opposed to the 4.3 million. But, once again, trying to just be in the middle, I ran all the numbers. And if you added the two together, you still come up with 1.67 pounds of nitrogen.

If you averaged -- I'm going to refer to them as the Scotts numbers. Please don't use that but that's what they said at a Public Hearing as opposed to the Cape Cod Commission numbers it comes out even lower.

If you look at the next page, the leaching situation. 2.9 pounds of nitrogen applied per thousand square feet. The Cape Cod Commission has been quoted as saying that 20 percent is leaching rate. I wanted everybody to know that Cornell University says that 10 percent is the leaching rate.

But, let's take the 20 percent of the 2.98, 60 pounds per thousand square feet of nitro -- .6 pounds, I'm sorry, just a little over half a pound of nitrogen leaching.

If you now go the other way, .6 times 5 you get the 5,000 square foot home. It's 3 pounds, 3 pounds per the number of homes, you'd come out with 219,000 pounds of nitrogen estimated through the Cape Cod Commission numbers being released through leaching through the application of home fertilizers.

I did have a couple of questions that I was unable to get answered. I put them in here just for the sake of argument. I wanted to know what the 219,000 pounds related to in the parts per million for entirely across Cape Cod.

I also wanted to know did the 219,000 pounds actually equal to the estimate which is attributed to the lawns. Some say 7 percent. Some say 15 percent. I didn't really get a good answer on that.

But if you then calculate the 219,000 pounds into the total square feet of Cape Cod, you'd come out to a .000029 pounds per square foot.

Now I know I'm boring you all with this stuff, but I just have to, once again, refer to those

numbers to the UMass Best Management Practice document because, once again, by their own calculations presently, all the homeowners on Cape Cod are meeting those Best Management Practices. Just strictly the nitrate loading. I'm not going to say they're meeting it by spreading the stuff on the lawn -- on their driveways or not.

With that said, I do want to go on just a little bit longer and put in front of you the reason why we're here today. The reason why we're here today is to approve a DCPC. In approving the DCPC, we will be approving guidelines and guidelines only.

Once the regulations are formulated, and from what I understand today we did receive some model guide -- regulations, we will not have the opportunity as the Assembly to vote on those regulations. Those regulations will go directly to the towns.

So once we approve this today, it will not come back to us again. What we're voting on are guidelines, and specifically, guidelines in Section 6-4.

And if you refer to the document that I handed to you, you will see that I cut and pasted each guideline. And, quite frankly, I have a problem with every single one of them.

The first one is the Timing of Fertilizer. If the Cape Cod Commission in their regulations suggests that the timing of fertilizer shall be put on between October and April, which is okay I guess. But a town decides that they want to go from October 30 to May 15, their changing of the Cape Cod regulation will meet the guidelines. And in my argument, I think, should be approved.

I think, once again, we may end up with 15 different regulations. Now I know people are going to say well towns aren't going to do this. I'm not prepared to really believe that. These regulations are proposed to be adopted by the Boards of Health. Many Boards of Health are made up with five members who are appointed. This is not something that's going to be done by the apple citizens of the town.

With that said, I'll go on to the second one, which is, once again -- oh, I do have to add, and you're going to hear this a lot. In the first one, it's addressed in the UMass Amherst Best Management Practices by the way. That issue of the timing of fertilizer is addressed under the Best Management Practices. Their language specifically states that no fertilizer shall be applied to a lawn that is in a dormant state. So they're not specific to time frame, so obviously they don't want you applying fertilizer when a plant is not awake.

6.2 is the Location and near a Water Resource Area. Once again, covered in the UMass Dartmouth's Best Management Practice and also protected by local conservation boards.

Manner of Fertilizing. All this is spelled out in Best Management Practice documents and mandated by the state. Any variance from this chart would result in the derogation and possibly a derogation of the lawn and possibly lead to runoff. This one actually goes with the amount of nitrogen applied per year.

If you notice in their regulations or their draft regulations, they say one pound of nitrogen with a maximum of 3 pounds of nitrogen allowable for the entire year. Quite frankly, their regulations are .02 higher than what's already being put on the lawns today using their numbers.

So, again, I hope when I ask you to remove your brains you did because you've got to think of this like me. Here we are proposing a regulation that's actually giving them a little bit of a higher leeway than which is actually being put on using their own numbers today. Once again, this is covered under the Best Management Practices.

Education. Wonderful. I agree with it. But who's going to do it? Who's going to pay for it? And how is it going to be done?

The big one and the one that I really want you to think about is number 6.4.5. It's Certification. I'm very much opposed to this. This is going to create another level of government regulations that those people who are now following the regulations, the licensed landscapers, are

going to have to now add to their long list of things they need to do.

The interesting thing about this one though is that -- and, please, leave your brains on the table. If you want to pay and be licensed and be approved by some manner while you have to follow -- all you have to do is you don't have to follow these regulations, but you do have to follow the Best Management Practices.

Aren't we all going to be subject to following the Best Management Practices anyhow by the state? What ridiculous thing is this? Now we're going to ask people to be licensed so that they don't have to follow these regulations which do follow the Best Management Practices, but we're going to be able to charge you anywhere I've heard from \$25-\$50. My questions are, once again, who's going to license these people?

I attended a couple of different stakeholders meetings and I attended all the Public Hearings except for one, and I've heard things range from well the Boards of Health can do it to now I understand the proposed regulations are saying that the County's going to do it.

I sit on the Finance Committee for this board. We don't have this kind of money sitting in our County Extension Service. If you vote this in, you better support me next year when I ask for \$150,000 to be added to his budget because he's going to need it.

And, once again, it has been expressed to us the towns don't have to take this if they don't want to. Well, leave your brains on the table again. Let's say out of the 15 towns 5 do and 10 don't. Now these landscapers and businessmen and people are going to have to be licensed in five towns but they're not to be licensed in the other 10.

Aren't we trying to achieve one document for the entire Cape? By virtue of saying that towns can accept this or don't have to if they don't want to, to me, says we're opening the door for not one standard but a possibility of 15 similar, yet maybe not exact standards, or some towns not -- just saying, you know what, we're going to adopt the state's, which I'm sure is going to follow the Best Management Practices because they wrote it but that's further down the page.

This licensing thing is the worst part of this because, once again, it has been said time and time again the problem is not the professionals. The problems are the homeowners. Why are we penalizing the professionals then by making them, once again, have that much more paperwork that they have to do. I'm opposed to this part.

6.4.6, Exemptions. We are voting in the language that's in 6.4.6. Please understand that. It says a proposed regulation should include an exemption of commercial agriculture.

Cape Cod Commission comes up with regulations that exempt agriculture. I'm going to use my own town because I know they won't do this, but there are towns on the Cape that I'm telling you as an ex-president of Farm Bureau, they're not that farm friendly, especially cranberry growers. Five Boards of Health members appointed say we don't want to exempt agriculture. Why should we?

Now you're going to have some communities exempting agriculture, some not. The possibility of that happening. It goes on to say, "It shall consider exempting the golf courses." If you want one standard then what we should have in front of us are the proposed regulations of this DCPC and we should be voting that in. Leaving the door open for towns to change the proposed regulations which still meet the guidelines to me is allowing the opportunity for 15 different regulations. And I really have a problem with that.

If the Cape Cod Commission really wanted to have things exempted, they shouldn't put in here they should consider additional exemptions. They should have said it. "Golf courses will be exempt. Agriculture will be exempt." This leaves the door open for a lot of different discussions at 15 Boards of Health across the Cape.

Coming close to the end but still leave your brains on the table. 6.4.7. Their own guideline

states that they shall be -- should be consistent with the requirements and guidelines outlined in the UMass Best Management Practice for soil and nutrient management of turf systems.

I just wasted five minutes of your life for no reason whatsoever because that one there says that no matter what we suggest for a regulation, we want to make sure that it meets the state's suggested Best Management Practices. Why are we doing this? It doesn't make sense.

I go on with a little bit of narrative. If you want to go to the next page, I do say that I did attend all the meetings except for one. I do want the record to know this -- to be on the record that all the meetings I've attended to, at no time did one Board of Health agent stand up at the public hearings and ask for this. Not one.

At no time did I see an elected official from a town stand up at a public hearing and ask for this. This is a DCPC. Have we ever passed DCPCs in the time that I've been sitting here where no town official comes and says do this for us. That to me is very bothersome.

At no time did a homeowner, just average Joe Homeowner get up at the mic and either speak for it or against it. That's bizarre.

Countless numbers of organizations got up and testified that we should say no. Our own County Extension Service stood up and said they had questions and problems with the procedure.

And this is the biggest one. If you use the calculations of the Cape Cod Commission's own numbers, they are within the UMass Best Management Practices. Why are we doing this?

A couple of other things that follow it. You can take the time to read those small paragraphs if you want. I have been trying to get someone at the state online. I have been unable to do that. I do have a question, a legal question.

I personally don't feel that this is the last time that towns will have a -- the authority to, in fact, deal with nitrogen loading.

When I read the regulations, there is a chapter and verse in there that states when a town does enact a wastewater plan that they can address nitrogen loading in that plan. I don't want that to be the final thing because I'm not an attorney but that's the way I read it, so I do think that there will be opportunities.

Once again, I'll use the town of Harwich for example. We do not have a wastewater system in Harwich. If we were to do so, we would have to adopt Chapter 80, I believe it is. And in through that there are a number of different amendments that would allow us to then under Chapter 312, the Acts of 2008.

Once we create the sewer district, we would be able to, and I'm going to quote, "Reduce or eliminate the impact of nutrient enrichment on surface water bodies and source of drinking waters."

So I think we do have another -- or towns do have another opportunity. I'm not buying the you've got to do this because it's the last-ditch effort for the town to do something. I don't buy it.

My final comments again. I've already said it. If we do pass this today, these guidelines are going to go to the Boards of Health. The Boards of Health as the Cape Cod Commission has expressed under the gun to get this done by January 1. That means we're going to have 15 towns meeting, maybe holding public hearings, maybe not. I'm not sure. Some of them should. I should hope they would, but it's an awful lot to put on.

And once again, when you do put your brains back in, somebody tell me how when the guidelines themselves say we need to follow the Best Management Practices that the state has put forth this is going to somehow help us when you know the regulations coming down from the state are going to follow their own Best Management Practices.

I mean if you're going to tell me that you don't think that a town's going to change the regulations put forth because you know how officials are and they're not going to waste time creating their own. Well then you've got to tell me and agree with me that there's no way the state

is going to have the State House come up with some kind of regulations which go completely against their own UMass Best Management Practices.

I know I was long-winded. It was an awful lot of information. Thank you. And please vote this down.

Speaker BERGSTROM: Cheryl.

Ms. ANDREWS: I promised you I had a question. Here it is. My question is theoretically let's say the Assembly passes this today, but the town of Provincetown Board of Health decides after hearings or no hearings not to pass any regulations by the end of -- what is it? Is it January 1 or --

Chairperson BERGSTROM: January 1.

Ms. ANDREWS: January 1. My question then is Provincetown still in the DCPC? Now I'm asking this --

Speaker BERGSTROM: Yes. It's a Cape-wide DCPC, right. You'll be -- it's my understanding you'll be in the DCPC but you won't have any effect on you.

Ms. ANDREWS: Okay. Well, let's be clear because you all shook your head no but the Speaker just said the opposite.

Chairperson BERGSTROM: Well I don't know.

Ms. ANDREWS: Well, I want to be clear about this.

Chairperson BERGSTROM: Keep asking me these questions, I'm going to give you answers. I'm not going to guarantee that they're right.

Ms. ANDREWS: I know but I saw a lot of head shaking. The bottom line is I've never been aware of a Cape-wide DCPC before. This is the first. That's why there are so many questions about it.

So if my town and I think the previous speaker alluded to this, we've never had a situation where a town could be in a DCPC and the Selectmen didn't know about it. I can almost guarantee you my Selectmen don't know about this.

So I want to know if the Board of Health doesn't pass regulations, is my town still in this DCPC? If 10 towns don't pass these regulations, will the DCPC then just be those five towns or will it be the 15 towns?

Speaker BERGSTROM: Leo.

Mr. CAKOUNES: A DCPC is only a time frame laid out --

Ms. ANDREWS: No, it's -- it's a district.

Mr. CAKOUNES: Wait a minute. Wait a minute. Please. Please. It's a tool which has been established under the Cape Cod Commission Act basically for zoning. What it does is it puts a freeze, a timeframe for regulations to be implemented and then adopted by that town.

Centerville beach, there's no DCPC anymore. It's gone away. They've adopted the regulations though that were provided by the DCPC. People refer to it as that but it's not. It's now zoning. They adopted the regulations that we -- that they implemented under their DCPC.

Same thing with Harwich. We had a DCPC. We adopted the regulations. In this case, the DCPC specifically states that the regulations shall be adopted by the local towns' Boards of Health on or before January 1. In fact, if they don't adopt them by January 1, does it go away? Well, it doesn't go away, but it doesn't give the authority to anyone else. It doesn't give the authority to the Cape Cod Commission to implement them, and it doesn't give the authority of the Board of Health in March to join it, to vote it in.

So it's one of those things where it's kind of, well, it doesn't go away but it doesn't mean anything either. It's just there. And I hope that answers your question but maybe not.

Speaker BERGSTROM: Suzanne.

Ms. MCAULIFFE: Yes. I wanted to address the point about this being the first Cape-wide DCPC. I was the Yarmouth Selectmen Representative to the Ocean Management DCPC. And that was definitely not municipal land-based DCPC. That was looking at ocean in technically state waters. That was exerting the Cape Cod Commission and municipal control over state -- what happened in the state waters because it was off our shores. But that was not land-based municipal DCPC.

So this will be the first land-based municipal DCPC, and I think that that's an important critical piece of information that, because it's precedent setting, that I think the Assembly really needs to take this very seriously. It's not something that we can perhaps even digest and get our heads around in a brief half-hour/hour discussion today.

I would like to also ask each of you, if you have not, to talk to your Directors of Board of Health as I have. The Director of the Board of Health in the Town of Yarmouth feels that currently this would be an unfunded mandate if regulations were put in because Boards of Health are not staffed or prepared to enforce residential fertilizer use.

And how do you do that? Do you have someone call and say last night I heard my neighbor doing this or last night I saw my neighbor doing this? The enforcement of a residential, which is essentially what this is, fertilizer issue can be a problem for local towns.

And I'd also just, as an aside; I have a tremendous amount of respect for the Cape Cod Commission. Yarmouth is always butting heads with the Cape Cod Commission. But over the years, I've come to know that it is bright, capable, caring, very committed people.

But I just am scratching my head a little bit because some of the data on this, particularly in reference to Yarmouth, is old. Yarmouth doesn't do, you know, Yarmouth banned phosphorus years before it was even on its golf courses, even before it was even a problem. So some of the data in this, the part of this that's being presented is very old data from Yarmouth, and it's not true anymore.

So I think, for me, watershed by watershed there are nitrogen problems. Do we need to control fertilizer? Yes. Is it going to take of our wastewater problems? No. Is it going to be 5 percent of the cost of our wastewater, of our \$8 billion wastewater? Yes.

But I think that this leaves a lot of unanswered questions and a lot of issues particularly if you're going to try and enforce something that in its current way is going to be unenforceable.

Speaker BERGSTROM: Okay. I'd like to make a few comments. First of all, if Yarmouth or Chatham or Provincetown feels that they cannot enforce -- they do not want to put in regulations because it's impossible to enforce, they can do that. They can say we're not going to -- we'll go by the state regulations.

Now who's going to enforce the state regulations? You know, that's a good question. So we may have an unfunded mandate there whether we like it or not, whether we pass this or not.

But I just, you know, I feel like I'm living in an alternative universe here because so much of the criticism that has hit the Cape Cod Commission has been portraying it as this big umbrella organization that's riding herd over the individual towns.

Here the state has given Cape Cod, through the Commission and through the DCPC process a way of getting out from under the state regulations and empowering each individual town to set their own regulations. That's what they're doing. They're saying look there's this big amorphous monstrosity of regulation out there, the Commonwealth of Massachusetts. I mean I don't think of them that way but some people do. And they say -- but you guys on Cape Cod are lucky and they mentioned a couple other planning agencies because if you don't -- if you feel that these regulations are not restrictive enough, you have the right to alter them, change them within reason to regulations that you feel fit your town.

Now you've got to remember the state regulations regulate North Adams and Palmer and Worcester, places that don't have any salt water even near them.

Cape Cod is unique in a way and I know that the consideration of nitrogen loading is a lot different around the Pleasant Bay than it is let's say in Springfield.

Now another thing is that -- so Leo's arguments, I mean I respect Leo for making these arguments, but suppose he argued this about wastewater. Supposed he said, well, you know, why should we have each town doing their wastewater management plan. Why not have, you know, why not have everyone -- regulations passed by the Commission to cover everybody. Do you think that would be supported? Everybody would be raising a (Indiscernible) you can't do that. We had to have our town -- we had a town by town. We've got to have our solutions. I mean that's the way it's been portrayed to me in the past.

So here we have an example of the Commission stepping in and saying, okay, look. We're going to pass a DCPC. And under this DCPC, each town will have the right to discuss the issues that have been brought up by Leo and others and decide on their own whether the state regulations fit their requirements or do they feel that there should be a different level of enforcement and a different level of requirements.

Now, you know, I'm from Chatham. And if Chatham doesn't want to do this, they don't have to do it. All right. But if I vote against this, what I'm saying is Chatham doesn't want to do this and I'm not going to let Wellfleet do it either. You know, Chatham doesn't want to do this and I'm going to vote and not allow Provincetown to do it either.

So I respect the science. There are arguments. Leo's put up a good argument. Different regulations come out of Cape Cod Commission. As far as UMass goes, I don't know if UMass is going to come down here and tell us what to do. I think they've given us guidelines. These are going to be regulations.

So I'm going to support this if for no other reason than every town has the option of saying no. That's very simple.

Yes, I'll recognize Deborah.

Ms. MCCUTCHEON: I'd like to support this DCPC. I have read this whole book that you gave me this afternoon, which thank you very much. I liked it. I thought the regulations -- you know, ordinarily, I vote with Leo, and on this one, I walked in here prepared to do that.

I was impressed with the regulations, the proposed regulations for the Board of Health. And the primary reason for that is that I'm the Chair of the Truro Conservation Commission, and we've been trying for a long time to regulate fertilizer use near those waters that we protect. It's hard to do. I think this is a tool that will help. I'm not sure it's the solution to the problem, but I think it would help and I will support it.

Speaker BERGSTROM: Cheryl.

Ms. ANDREWS: Thank you, Mr. Speaker. I understand the argument that you're putting on the table. Frankly, politically, it's brilliant because it's an easy sell. Well any town that wants to get out can get out. What's the harm? On its face, it's a great argument politically whoever came up with it; it's brilliant.

Here's the problem. Unless -- regardless of what happens, if this passes, this body has just passed a Cape-wide DCPC. That is a big deal.

And one of the reasons it's a big deal is because of the dreaded elephant in the room which is the Cape-wide Wastewater DCPC. And I don't know how I would vote on that. And I was hoping to look at this and see how the Cape Cod Commission approached a Cape-wide DCPC. I figured this would be a good test to see how they did.

So I'm looking to see why Provincetown is included in this. We have a huge sewer. We

just spent millions upgrading our storm water drains. We just spent millions putting in a state-of-the-art pervious Commercial Street so that we don't have all of our trash and water going into the water. We hardly have any -- I don't think we have a lake. We have some ponds.

Chairperson BERGSTROM: I don't think you have a lawn either.

Ms. ANDREWS: Actually, there are a few lawns. We've got a lovely garden tour at the end of September.

But the point is I can't fathom why Provincetown would be included in this. I haven't seen any science to explain why we'd be included in this.

So I was expecting to see a scientific basis for the areas of the Cape that would be included in this. That's what I was hoping for. It didn't happen. So what I've seen instead is a political, instead, decision to just include all the towns and that's a disappointment.

The second issue is that I was around when the Speaker of the Assembly and one County Commissioner came to Provincetown and said, "Don't you worry about that Wastewater Protection Collaborative because you can opt out." You guys remember that. "You can opt out."

Well, unless you guys know a way for my town to opt out of paying its share of County taxes, no, we can't. But that's what we were told.

So when you talk about opt in and opt out, well that's what we were told. I can give you the newspaper articles. You can opt out of going to the meetings is what they really meant, but you can't opt out of the Cape Cod Commission unless you go this whole other route which is not what I'm talking about.

So my concerns are based on the history of that concept. If this DCPC passes, it is a Cape-wide DCPC. You have indeed taken that vote. And unless we hear from the Commission themselves the town doesn't adopt regulations by January 1, it is no longer part of the DCPC. And even then, you've passed a Cape-wide DCPC. And I think it's an important issue for people to think about.

Thank you.

Chairperson BERGSTROM: I've probably said enough already but, I asked the Cape Cod Commission during our Public Hearing last week to put up some proposed regulations and they normally don't do that. And here's the reason why they don't normally do that.

Let's take the Craigville Beach situation. A DCPC is an opportunity for the people involved to control a certain area for reasons of zoning or reasons of environment. Once the DCPC is established, the area involved, in that case Craigville Beach or in case the town of Barnstable, they're the ones that draw up the regulations and submit them to the Commission. It's not like the Commission -- he was talking about a Cape-wide DCPC. People are presuming the Commission's going to come out with all these regulations. That's not how it works. The DCPC is requested.

In this case, it was an opportunity given to us by the state and the Legislation. Then the people who were involved were the ones who submit after the DCPC is passed, the people who are affected are the ones who submit the regulations to the Commission and the Commission approves them or not approves them.

So there is a perfect example here is that you talk about the Wastewater DCPC. Well, even if there was in some alternative universe a big -- you (Indiscernible) to have a Cape Cod Wastewater Collaborative. The people who are affected are the ones who are going to have to propose the regulations and have them approved by the Commission.

So, you know, it's -- I know this very complicated. It's all science involved, some procedure involved. You know I had a difficult time not in deciding how I was going to vote, but I had to say how we're going to deal with this and how we're going to explain the issues and the time frame and everything.

But the DCPC is created. That gives the opportunity to the towns to draft regulations. Those regulations go to the Commission. And unless they're out of the ballpark, I assume the Commission will approve it.

So as far as a Cape-wide DCPC goes, that's not going to change. Any town affected is the ones who are going to draw up the regulations.

Ms. ANDREWS: One more question?

Chairperson BERGSTROM: Question away.

Ms. ANDREWS: Okay. This question has to do with a DRI that was in Truro but was in the Wetland Protection Zone for Provincetown Water System. And in that decision by the Cape Cod Commission it included -- the decision itself dealt with fertilizer use.

So my question is when all this is said and done, will the Commission still have the right to do that in their DRIs?

Speaker BERGSTROM: DRIs are completely different that a DCPC. I mean I don't know to meld the two together.

Leo, do you have something to say about that?

Mr. CAKOUNES: No. I don't have anything to say about that, Mr. Speaker. But I do want to comment or react to a couple things that were mentioned.

First of all, you said well who's going to enforce the UMass Dartmouth's Best Management Practices if nothing is done. Please understand the process. UMass Dartmouth does not enforce anything.

Chairperson BERGSTROM: Right.

Mr. CAKOUNES: All right? The state does. And the state by the virtue of the statute that we are here today, which for the record is 262 Acts of 2012, very last paragraph says, "Shall be done in conjunction with the UMass Amherst Extensions Regulations on plant nutrients.

All their doing is saying that whatever regulations anyone creates through that chapter and verse shall meet those standards.

I keep repeating that because that, once again, maybe I should ask you to put your brains in. Maybe it makes more sense to you that way. But for me, I don't think you really need a brain in there to realize that the state is already going to be mandating and has said that they're going to be following and you have to follow the UMass Best Management Practices. Already mandated that to us.

Second thing is the Speaker said that the regulations that come forth from the state are going to be -- may not apply to the Cape. You're wrong. They're definitely going to apply to the Cape.

Chairperson BERGSTROM: I didn't say that.

Mr. CAKOUNES: Well, you mentioned Worcester --

Chairperson BERGSTROM: I said we were given an opt out on the regulation. On the regulations are -- the regulations given by the state control are controlled state-wide. In other words, they cover Worcester and inland areas as well as coastal areas. That's what I was saying.

Mr. CAKOUNES: Thank you for that clarification. But once again, we're talking about lawn fertilizer. And the lawns out in the western part of the state when you read -- if any of you have taken the time to -- look at the Best Management Practices document. It gets into specific types of lawns/grasses. Beyond me to tell you what a fescue is to a thick lawn. And it tells you the suggested rates of application. So it is addressed in there.

The leaching aspect, I might give you that one. Maybe our leaching rate is a little different but, once again, refers to the numbers that I ran up for you. We're not that out.

The other thing that -- well, once -- oh. Everybody keeps repeating let's vote this in so we can give the towns their opportunity to either vote for it or not. That statement alone is enough to

vote against this. I thought we didn't want 15 different regulations. How are we going to calculate the effects of these 15 different regulations on the savings of nitrogen loading if Harwich decides not to have a licensing requirement, and Barnstable decides too?

All those things will fit into the guidelines. That's what you're voting here today is the guidelines. And as the Speaker just said, this gives the opportunity for the towns to come up with regulations. They can use the suggested ones from the Cape Cod Commission or they can really, I believe, create their own as long as they meet the guidelines of the DCPC. What you're doing here today is not doing any benefit to the entire wastewater management nutrient loading system. You're not doing that.

If these were regulations that we were voting here today and the towns were mandated to adopt them that argument would flow. But you people can't have your cake, ice cream and frosting all. You can't.

Either we're creating a vehicle which is going to allow for 15 different regulations or we're creating a vehicle that's going to allow some towns to adopt and some towns not do, which to me is not a good benefit.

But once again, put your brains in, no matter what regulations anyone approves, they have to meet the Best Management Practices. That state mandated. That's not just an easy statement. Whatever town, they have to meet the Best Management Practices.

So, please, if you don't believe that in January that the state when they come forward with their single regulation is going to follow their own Best Management Practices when they're mandating us, I don't buy that.

Vote it down and let's have one standard for all of Cape Cod.

Chairperson BERGSTROM: One standard for all -- okay.

Yes, Suzanne.

Ms. MCAULIFFE: I'm confused. Each town that votes in is going to do its own regulations or there is going to be a set of regulations that a town can opt in or out of? Drafting out --

Speaker BERGSTROM: The town can submit -- this is my understanding. The town submits its regulations; right?

Ms. MCAULIFFE: No. According to the Cape Cod Commission, it's a set of regulations and a town opts in or out. This is just an example of why I think that this body should have a presentation and a full discussion and an opportunity to talk to the people who are making the proposal.

No disrespect to subcommittees because I've worked on boards that have done their business by subcommittees but sometimes there are questions and issues that the subcommittee -- that don't come across the subcommittee people.

Now I was told by my assistant town administrator that it's one set of regulations that a town will opt in or out of. And I'm hearing here at the table now it's every town could do its own regulations.

So I'm really confused now.

Speaker BERGSTROM: Well, you're going --

Ms. TAYLOR: Mr. Speaker.

Chairperson BERGSTROM: Yes.

Ms. TAYLOR: I think it's very clear that -- do you have the copy of the memorandum from the Cape Cod Commission?

Ms. MCAULIFFE: Well, I'm just going by what my assistant town administrator told me.

Ms. TAYLOR: But he's not -- I don't believe he's correct. Do you have a copy of the

memorandum?

Ms. MCAULIFFE: Well, he spoke to someone at the Cape Cod Commission who's nodding in the affirmative to what I'm saying. I'm just --

Chairperson BERGSTROM: Well, you know, either Leo's wrong or you're wrong because -- and Leo's never wrong so. He says that we can have 15 different regulations, and you're saying, "No, we're only going to have one regulation."

It's been my understanding, and everyone who's commented on this since the subject was brought up at the public hearing and ever since then has said, "The towns will submit their regulations to the Cape Cod Commission. They cannot be any less stringent than the state regulations which I've yet to see. Okay. But they can be more stringent. And the guidelines that they've set up are simply a guide to say, "You can set your own regulations. Here are some recommended regulations." That's my understanding.

Ms. MCAULIFFE: That's fine but I'm sitting here with Cape Cod Commission people nodding in disagreement to you.

Speaker BERGSTROM: Well, that's not going to do them any good. Leo.

Mr. CAKOUNES: I just want to clarify my statement and the way I understand it and I don't presume to be right. We are voting in a document you all have it in front of you. Those documents have guidelines, specific language.

The Cape Cod Commission is going to put forward regulations which they believe meet those seven guidelines. A town can either approve the regulations suggested by the Cape Cod Commission, deny those regulations, or the way I read the law they can adopt a new set which falls into the guidelines. That's the important thing.

They cannot just willy-nilly come up with a whole new bunch of regulations. I use the licensing one for instance. If the town does not want to have -- bother to have their citizens be licensed, they can adopt all the other ones on the Cape Cod Commission but opt out of just that one. It still meets the guidelines.

Or they can change it and say we don't want the County to collect the money. We want to collect the money. That's what I mean when you will have 15 different, possibly, 15 different regulations.

They all will meet the guidelines. That's what we're voting today, the guidelines. That's why I went through the exercise of showing you I don't like the guidelines. They're too broad and they leave to the general thinking person the opportunity of 15 different regulations.

Speaker BERGSTROM: Let me just read this. It says here the Town, "Section 6.2. Introduction to General Guidelines. Towns shall develop and review implementing regulations consistent with the guidelines described herein. Through the implementing regulations will be -- though the implementing regulations will be adopted town by town, a consistent regional approach to regulation considering among other things that a town-shared watershed is strongly recommended.

Accordingly, it is anticipated that the towns within the district shall -- will adopt further management regulations consistent with the guidelines described herein based on model regulations developed by the Cape Cod Commission with input from towns, stakeholders and University of Massachusetts." So on and so forth.

What it's saying is you adopt your own regulations. However, if they're inconsistent with the proposed regulations, let's say Chatham says, "We don't want another drop of fertilizer ever to be placed on any lawn," they're not going to be passed. As long as they're within the ballpark.

This is my -- because ultimately the Commission will vote to approve or disapprove the individual submissions by the towns.

So the town by town can -- town by town will adopt regulations. The Commission will decide whether they're consistent so that, for the very purpose, I believe, of not having regulations which are so inconsistent town by town that it's going to cause problems.

So, you know, I don't know if we're gaining anything here by beating on this. I'm going to have to take a vote on this.

Okay. We have a motion on the table. It's been moved and seconded. Let's take a vote.

Roll Call Vote on Proposed Ordinance 13-09: To establish a Fertilizer District of Critical Planning Concern pursuant to the Cape Cod Commission Act ("the Act") for Barnstable County, Massachusetts.

Voting YES (57.33%): Richard Anderson (9.15% - Bourne), Ronald Bergstrom (2.84% - Chatham), Teresa Martin (2.30% - Eastham), Deborah McCutcheon (0.93% - Truro), John Ohman (6.58% - Dennis), Patrick Princi (20.92% - Barnstable) Julia Taylor (14.61% - Falmouth).

Voting NO (35.39%): Cheryl Andrews (1.36% - Provincetown), Leo Cakounes (5.67% - Harwich), Ned Hitchcock (1.27% - Wellfleet), James Killion (9.58% - Sandwich), Marcia King (6.49% - Mashpee), Suzanne McAuliffe (11.02% - Yarmouth),

Absent (7.28%): Christopher Kanaga (2.73% -Orleans), Anthony Scalse (4.55% - Brewster).

Clerk O'CONNELL: Mr. Speaker, Proposed Ordinance 13-09 passes with 57.33 percent of the Delegates voting "yes"; 35.39 percent voting "no"; 7.28 percent absent and will become known as Barnstable County Ordinance 13-07.

Proposed Ordinance 13-09: To establish a Fertilizer District of Critical Planning Concern pursuant to the Cape Cod Commission Act ("the Act") for Barnstable County, Massachusetts.

Chairperson BERGSTROM: Okay. So we got through that one.
Next we come to report from the Clerk.

Report from the Clerk

Clerk O'CONNELL: Thanks for submitting your mileage sheets today.

And at the next Assembly meeting before the Assembly meets, we will be meeting with Finance to discuss one of the Proposed Ordinances that was submitted today.

So there will be a committee meeting in advance of the Assembly meeting on October 2 for Finance. And it will probably be at 3 o'clock.

And you will also have a Proposed Resolution on the agenda for the next Assembly meeting. That was submitted today. And I guess a presentation on Proposed Ordinance 13-08, which you tabled today because you want a presentation from the Cape Cod Commission. So be prepared.

Speaker BERGSTROM: Okay. Is there any other business to be brought before the Assembly?

Deputy Speaker MARTIN: Motion to Adjourn.

Ms. KING: Second.

Speaker BERGSTROM: Moved and seconded. All those in favor, say "Aye." "Opposed?"

Whereupon, it was moved, seconded, and voted to adjourn the Assembly of Delegates

at 5:25 p.m.

Respectfully submitted by:

Janice O’Connell, Clerk
Assembly of Delegates